In the High Court of Punjab and Haryana at Chandigarh

I.T.R. No. 92 of 1989

Date of Decision: 14.03.2007

The Commissioner of Income-Tax, Jalandhar

…Petitioner

Versus

M/s Sukhjit Starch & Chemicals Limited, Phagwara

…Respondent

**CORAM: HON'BLE MR. JUSTICE M.M. KUMAR**

**HON'BLE MR. JUSTICE RAJESH BINDAL**

Present: Mr. Sanjeev Bansal, Advocate,
for the petitioner-revenue.

**JUDGMENT**

**M.M. KUMAR, J.**

The revenue has approached this Court by raising the following question of law under Section 256(1) of the Income Tax Act, 1961, which is claimed to have arisen out of the order of the Income Tax Appellate Tribunal, Amritsar, from its order dated 24.2.1987 while deciding ITA No. 707(ASR)/1985, in respect of assessment year 1982-83:-

> "Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the assessee is entitled to investment allowance on new machinery in the year of instalation even if it was not put to use in that year?"

The assessee had claimed investment allowance on plant and machinery on the value of Rs. 33,58,000/-. There is no dispute that the machinery was installed in the accounting period relevant to the assessment year 1982-83 and paid for but was not put to use during the year. The Assessing Officer did not allow the investment allowance on the ground that it was not put to use in the accounting year relevant to the assessment year 1982-83. The Commissioner of Income Tax (Appeals), however, allowed the claim of the assessee after recording detailed reasons in para 6 to 9.2 of its order dated 10.10.1985 (Annexure 'B'). The matter was brought before the Tribunal by filing an appeal by the revenue. The Tribunal took the view that under Section 32A(1) the assessee has been given an option to claim investment allowance either in the year of installation or in the year when the machinery is first put to use when such year happens to be a year subsequent to the year of installation. The Tribunal, therefore, upheld the view taken by the CIT(A), which had accepted the claim of the assessee and allowed investment allowance. The Tribunal has placed reliance on the view taken by the Madras High Court in the case of **Commissioner of Income Tax, Tamil Nadu-I v. VayithriPlantations Ltd., (1981) 128 ITR 675**.

After hearing learned counsel for the revenue, we are of the considered view that the question has to be answered against the revenue. The non use of machinery in the accounting year relevant for the assessment year 1982-83 does not result into

change of its character from new machinery to old machinery. The object of the section is to encourage industrialization and grant some benefits. Even otherwise we find that Section 32A also provides an option to the assessee to claim investment allowance either in the year of installation or in the year when the machinery is first put to use, if such year happens to be a year subsequent to the year of installation. The aforementioned view is fully supported by the judgment of Division Bench of Madras High Court in the case of Vayithri Plantations Ltd. (supra). The view of the Division Bench of the Madras High Court reads as under:-

> " The result of these cases is to establish that the machinery could be "used" for the purposes of the business so long as it is kept ready for such user. Any "forced idleness" of the machinery cannot disentitle the assessees from getting the benefit of the allowance. In the present case, from the directors' report, which have already been extracted and the contents of which are not at all in dispute, it is clear that the assessee was prevented from using the machinery because of the frequent labour unrest. In these circumstances, we consider that, in the present case, the assessee would be eligible for the allowance as the machinery was kept ready for use and I that sense had been "used" for the purpose of that business, as contemplated under the provision."

The aforementioned view settles the controversy in favour of the assessee and against the revenue. No contrary view has been cited. Accordingly, we answer the question against the revenue and in favour of the assessee.

**(M.M. KUMAR)**
**JUDGE**

**(RAJESH BINDAL)**
**JUDGE**

**March 14, 2007**
Pkapoor